

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DONALD A. SMITH,

Plaintiff,

v.

**CIVIL ACTION NO. 2:04cv 54
(Maxwell)**

**JO ANNE B. BARNHART,
COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

ORDER

On January 14, 2005, the Court referred this Social Security action to United States Magistrate Judge John S. Kaull, pursuant to 28 U.S.C. § 636(b)(1)(B), Rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 4.01(d), with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition. On September 1, 2005, Magistrate Judge Kaull filed his Report and Recommendation/Opinion, and on September 12, 2005, Magistrate Judge Kaull filed an Amended Report and Recommendation/Opinion wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his Objection to Proposed Findings of Fact and Recommendation for Disposition of United States Magistrate Judge Kaull on September 22, 2005.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised in the cross motions for summary judgment were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the

proposed Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Moreover, the Plaintiff's objections have not raised any issues that were not thoroughly considered by the Magistrate Judge in his Report and Recommendation. Therefore, it is

ORDERED that Magistrate Judge Kaull's proposed Report and Recommendation be, and hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly,

1. The Defendant's Motion for Summary Judgment is **GRANTED**;
2. The Plaintiff's Motion for Summary Judgment is **DENIED**;
3. The decision for the Defendant is **AFFIRMED**; and
4. This civil action is **DISMISSED** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment order and to send a copy of this Order to all counsel of record.

ENTER: September 30th, 2005

/s/ Robert E. Maxwell
United States District Judge